

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF IOWA  
Western Division (Council Bluffs)

In the Matter of the  
Tax Indebtedness of  
MAUREEN R. OLSEN

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Case No. 1:12-CV-00023

PETITION FOR JUDICIAL APPROVAL  
OF LEVY UPON PRINCIPAL RESIDENCE

The United States, by its attorneys and upon the accompanying Declaration, petitions this Court for an order approving an administrative levy by the Internal Revenue Service upon a principal residence. In support of this petition the United States submits the accompanying Declaration and asserts as follows:

1. This proceeding is brought, and the Court's jurisdiction arises, pursuant to 28 U.S.C. § 1340 and 26 U.S.C. ("I.R.C.") §§ 6334(e)(1) and 7402(a).
2. Section 6334, I.R.C., as is pertinent here, exempts from administrative levy by the Internal Revenue Service property used as a principal residence of the taxpayer (within the meaning of I.R.C. § 121), unless such levy is to satisfy a liability which exceeds \$5,000, and is approved, in writing, by a United States District Court Judge or Magistrate Judge. *See* I.R.C. §§ 6334(a)(13)(B) & 6334(e)(1); 26 C.F.R. § 301.6334-1(d).
3. To obtain approval from the court, the United States must demonstrate that:
  - a. the liability is owed<sup>1</sup>;

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<sup>1</sup> Forms 4340, Certificates of Assessment and Payments, are attached to this petition as Exhibit A. Certificates of Assessments and Payments, are self-authenticating documents, are admissible as evidence, and establish that assessments were made by the IRS in accordance with statutory and regulatory requirements. *United States v. Bisbee*, 245 F.3d 1001, 1006 (8th Cir. 2001); *United States v. Gerads*, 999 F.2d 1255, 1256 (8th Cir. 1993); *United States v. Neal*, 255 F.R.D. 638, 643 (W.D. Ark. 2008).

- b. the requirements of any applicable law or administrative procedure relevant to the levy have been met; and,
- c. no reasonable alternative for the collection of the taxpayer's debt exists.

When the government has shown these three factors, a levy of a principal residence is appropriate. *United States v. Pragasam*, No. 06-56691, 2007 WL 1103748 at \*17 (9th Cir. March 5, 2007.)

- 4. By this petition, the United States seeks approval for the Internal Revenue Service to levy upon the interest held by Maureen R. Olsen ("Taxpayer") in the property located at 418 Bardsley Avenue, Neola, Iowa 51559 ("Property"), within the jurisdiction of this Court. The Property is the principal residence of the Taxpayer, and is legally described as follows:

Lot 2, Pursell Heights Addition, Town of Neola, Pottawattamie County, Iowa

- 5. Courts review the petition for approval of a levy on a similar basis as a summons enforcement action. *In re Blake*, 2008 WL 5244326 (E.D. Mich. 2008) (citing *Pragasam*, at \*17.) This means that the government makes its prima facie showing by submitting the declaration of the investigating agent that all requirements have been met. *See Pragasam* at 18 (internal citations omitted.)
- 6. On the following dates, a delegate of the Secretary of the Treasury made assessments against Maureen R. Olsen d/b/a Gazette, for unpaid federal employment taxes for the tax periods shown below, plus interest and penalties which have accrued from the dates of assessment:

<u>Tax Period</u>	<u>Assessment Date</u>	<u>Initial Assessment</u>	<u>Unpaid Balance as of July 27, 2012</u>
<b>FORM 941:</b>			
Sept 2008	7/20/2009	\$4,477.46	\$4,603.61
Dec 2008	7/20/2009	\$6,736.26	\$7,457.84
March 2009	7/27/2009	\$6,125.96	\$6,766.25
June 2009	6/14/2010	\$1,219.68	\$1,330.50
Sept 2009	6/7/2010	\$710.88	\$782.64
Dec 2009	6/7/2010	\$1,136.18	\$1,266.00
March 2010	6/28/2010	\$1,284.12	\$1,448.23
June 2010	10/25/2010	\$1,162.03	\$1,302.12
Dec 2010	7/4/2011	\$1,208.53	\$1,361.53
March 2011	8/22/2011	\$721.99	\$852.81
June 2011	3/26/2012	\$1,210.11	\$1,253.10
Sept 2011	3/26/2012	\$931.62	\$974.30
Dec 2011	3/26/2012	\$1,064.82	\$1,107.10
<b>FORM 940:</b>			
Dec 2005	8/17/2009	\$456.27	\$507.32
Dec 2006	7/20/2009	\$303.23	\$335.55
Dec 2007	7/20/2009	\$417.73	\$461.40
Dec 2008	7/20/2009	\$409.00	\$450.23
Dec 2009	6/14/2010	\$194.61	\$216.88
Dec 2010	6/27/2011	\$827.18	\$938.74
Dec 2008			
Miscellaneous	8/29/2011	\$3,248.65	\$3,341.56
Penalty			
<b>TOTAL</b>			<b>\$36,757.71</b>

7. Notice of the assessments and demand for payment were duly given to the Taxpayer. Despite notice and demand, she has failed to pay the liabilities in full. As of July 31, 2012, the Taxpayer remains indebted to the United States in the amount of \$36,757.71 plus interest and penalties which have accrued since that date and will continue to accrue until payment in full.

8. The Internal Revenue Service has followed the requirements of applicable law and administrative procedures relevant to a levy upon the Property.
9. The Internal Revenue Service has attempted to satisfy the Taxpayer's unpaid liability from assets other than the Property, and no reasonable alternative exists to satisfy the unpaid tax liabilities described above.

WHEREFORE, the United States prays that:

- A. This Court enter the attached Notice and Order to Show Cause; and
- B. If no written Objection to Petition is filed with the Clerk of the Court within 25 days from the date of the Order to Show Cause, the Court enter an order approving the administrative levy on the Property, to be executed by any authorized officer of the Internal Revenue Service; and
- C. If a written Objection to Petition is filed with the Clerk of the Court, the Court set a hearing date for this matter, at which the objections raised shall be considered and after which the Court may enter a further order approving the administrative levy on the Property, to be executed by any authorized officer of the Internal Revenue Service.

Dated: August 22, 2012

Respectfully submitted,

NICHOLAS KLINEFELDT  
UNITED STATES ATTORNEY

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